

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

XO Communications Services Request for a)	
Review of a Decision by the Universal Service)	
Administrative Company)	WC Docket No. 06-122
)	

Reply Comment of BT Americas Inc. on Behalf of Itself and Other BT Entities

BT Americas Inc. files this reply comment on behalf of itself and BT plc's other wholly owned indirect U.S. subsidiaries (hereinafter referred to as "BT"). BT agrees with the comments filed by Verizon and other commenters that the question of whether some or all MPLS-enabled services are assessable should be addressed in a notice and comment rulemaking.¹ Indeed the USF contribution obligations of any IP-enabled service should be addressed via a notice and comment rulemaking. As for whether XO's MTNS service is a telecommunications service, BT does not take a view on this issue.

INTRODUCTION

BT provides information, communications, technology and professional ("ICT") services in the UK and globally. In addition, in the UK, BT is the incumbent provider of telecommunications services. Outside the UK, BT primarily operates via its Global Services division delivering global ICT services to businesses and governments.

¹ Verizon Comments at 2-10; Qwest Comments at 4-5.

ARGUMENT

THE COMMISSION SHOULD ADDRESS THE ASSESSABILITY OF MPLS-ENABLED SERVICES REVENUE VIA RULEMAKING, NOT ADJUDICATION, SO THAT THE COMMISSION MAY CRAFT FAIR, EQUALLY APPLICABLE, PROSPECTIVE, BRIGHTLINE RULES FOR INDUSTRY AND CUSTOMERS

As Verizon points out in its comments, MPLS is a technology and not a service. The technology is incorporated into a variety of services offered by a variety of providers, and the issue of whether a particular MPLS-enabled service is a telecommunications or information service is dependent on the features of a particular service. In ever-converging all-IP environments where the distinction between computing and telecommunications is increasingly fuzzy, engaging in service-by-service adjudications about which MPLS and indeed IP-enabled services are information services and which are telecommunications services only generates uncertainty and confusion. This is because, in such cases, the agency necessarily would be narrowly focused on facts surrounding specific MPLS and IP-enabled services, and in arriving at decisions, the agency would have to engage in further clarifications and fine distinctions regarding what is already a maze-like body of precedent. This is a no-win proposition for customers, providers and the Commission.

All are agreed that what is desperately needed is uniformity, simplicity, clarity and a level playing field with respect to the USF-assessability of services. Verizon has articulated a way forward for the Commission to extend universal contribution obligations to certain services should it choose to do so without categorizing the services as telecommunications services or information services. As Verizon explains, the Commission could extend USF contribution obligations using its permissive authority under Section 254(d).² However, as Verizon points out, the Commission cannot act to expand the base of contributors without a rulemaking

² Verizon Comments at 8-9.

proceeding. There is a rulemaking that the Commission opened in 2004 to determine how it should regulate VOIP and other IP-enabled services in which the Commission also discussed IP VPNs and MPLS-based services.³ The Commission could use this open rulemaking to make decisions about whether to expand the base of contributors to include certain MPLS-based services and IP VPN services. Or the Commission could make the decision in another rulemaking. What is important, however, is that the Commission write clear, prospective rules that treat all providers of a category of services the same way without going down the rabbit hole of trying to individually distinguish MPLS-enabled services that are information services from telecommunications services.

This was the course pursued by the Commission when it wrestled with whether VOIP services are USF-assessable and if so which ones. Instead of trying to differentiate individualized VOIP offerings by hundreds of providers to try to distinguish the features of one provider's VOIP service that would tend to make it a telecommunications service and another provider's an information service, the Commission avoided such a futile and chaos-producing course of action.⁴ Instead the Commission initiated a rulemaking. As a result of the rulemaking, the Commission was able to step back, examine wider policy considerations regarding the universal service fund, and set a bright line rule of general applicability that departed from Commission precedent of distinguishing which services are telecommunications services and which are information services. Using amongst other things its permissive authority under Section 254(d), the Commission extended contribution obligations to a certain category of VOIP

³ *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

⁴ *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

services – interconnected VOIP services.⁵ This action avoided the administrative nightmare for providers and consumers of attempting to categorize each VOIP service as a telecommunications or information service and brought certainty, clarity and simplicity to a small corner in the field of determining the USF-assessability of a service.

For the reasons described above, the Commission should proceed via a notice and comment rulemaking in this instance as well as any other instance involving the question of whether USF contribution obligations apply to other IP-enabled services.

Respectfully submitted,

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⁵ *Id.*